
(1978) 04 AP CK 0007

In the Andhra Pradesh High Court

Case No : Letter Patent Appeal No. 94 of 1974

Chekka Venkata Suryanarayana Murthy

APPELLANT

Vs

Appana Veerraju and Another

RESPONDENT

Date of Decision : 02-04-1978

Acts Referred:

Limitation Act, 1963 — Article 55

Citation : AIR 1980 AP 32

Hon'ble Judges : Sambasiva Rao, J;Raghuvir, J

Bench : Division Bench

Advocate : C. Poorniah, for the Appellant; C. Sitaramayya, for the Respondent

Judgement

Raghuvir, J.—This L. P. A. arises out of a purchaser's suit for specific performance of agreement of sale (Ex. A-2) dated 1-2-1961 by which the defendant's father Sriramulu, who died on 3-4-1961, having received Rs. 200/- agreed to sell the house No. 3/10 Of Thallarevu village in East Godavari district, and received Rs. 100/- on 15-3-1961 out of the total consideration of Rs. 400/-. In Ex. A-2 the parties fixed the date for performance as on 1-6-1961 or earlier. The suit, however, was filed on 12-11-1968.

2. The suit house was the subject-matter of dispute in O. S. No. 30/60 on the file of the District Munsif's court at Kakinada, in which Maneoalli, Veerraju claimed possession. Sriramulu, the defendant in the suit, was defending his title to the house. The suit was dismissed on 20-1-1961, twelve days earlier to the execution of the agreement of sale, Ex. A-2. The suit ultimately dismissed the suit. The plaintiff at first, on 18-5-1961 issued notice and demanded performance and again on 4-9-1966, after the suit is finally decided, issued, for the second time, notice for performance of the agreement.

3. The defendants resisted the specific performance on the ground that it was barred by limitation under Art, 113 of the Limitation Act (Act 9 of 1908), (Act 36 of 1963),

4. Mr. Poorniah , the learned Counsel for the plaintiff- appellant, submits Veerraju"s suit was decided finally on 17-7- 1968. Therefore, the purchaser plaintiff could not have instituted the a suit prior to that date. It is urged, in the circumstances of the case, it should be held that the cause of action arose on the day when O. S. No. 30/60 was finally decided in favour of the vendors, as, it is argued, laying a suit for specific performance earlier to the impediment to the title of the defendants was finally removed and immediately the suit is field. The cause of action, it is argued, should be constructed to have arisen also on 12-11-1968. In the alternative it is argued, the cause of action arose on 1- 6- 1961 and institution of the suit under Articles 113 of act 9 of 1908 has to be made within three years from the when the cause of action arose.

5. In Muthu Korakki Chetty v. Madar Ammal ILR (1920) Mad 185 (FB) at 211, Seshagiri Aiyar J. Speaking for the Full Bench Observed: "Broadly Speaking, the decisions of the Board fall under two heads."

6. The cases, then, are collected at page 211 of the Report and further the learned Judge held:

"It was argued , not without some plausibility, that the first class of cases recognise the doctrine that where a party, in whose favour a cause of action has arisen, cannot usefully pursue a remedy at the time his right of action is postponed to a subsequent date..... the true rule deducible from these various decisions of the Judicial committee is this; that subject to the exemption exclusion, mode of computation and the excusing, of delay etc. Which are provided in the limitation Act, the language of the third column of the first schedule should be so interpreted as to carry out the true intention of the legislature, that is to say, by dating the causing of action from a date when the remedy is available to the party. This is a rule of construction and not a rule of law....."

6-A. The Madras High Court in two subsequent decisions in Vadlamannati Bala Tripura Sundaramma alias Suiadaramma Vs. Abdul Khadar, and in Ramaiya v. Surryanarayan (AIR 1949 Mad 279) doubted the ratio decidendi of the full Bench decision in Muthu Korakki Chetty v. Madar Ammal (1920) ILR 43 Mad 185.

7. In AIR 1945 5 (Privy Council) the privy council, considering a suit instituted on 25-11- 1932, where the plaintiff urged to exclude the period, u/s 15 of the Limitation Act (ACT 9 of 1908) between 25-11-1920 and 4-11-1932, as "continuously the suit was stayed for various order of temporary injunction and permanent injunctions as embodied in the decree by the High Court" held:

".....there is nothing in the injunction or in the decree to support the contention. that the appellant (plaintiff) was prevented from instituting a suit for possession in 1920, or at any time before the w expiry, of the period of limitation."

And made a significant observation:

".....the institution of a suit can never be said to be futile, if it would thereby prevent the running of limitation."

and confirmed the dicta of the Full Bench though not referred in the decision *Sundaramma v. Abdul Khadar* (AIR 1933 Mad 418).

8. Having regard to the decision in AIR 1945 5 (Privy Council) we hold the decision in *Muthu Karachi chetty. Madar Ammal* 9 ILR (1920) Mad 185 is no more good law.

9. Sri Poorniah, then, referred to the decision in *Laxminarayana v. Singaravelu* (1962 2 MLJ1560 where Ganapathi Pillai J.held:

".....The doctrine of imputing in tension to the parties to a contract which may at times be at variance with the terms of a contract reduced to writing is a doctrine which has found acceptance of late with courts. This doctrine really rests upon the principle of construing an agreement with reference to the real situation or context in which it was entered into not relying upon the mere wording the contract as fixing the real intention of the parties....."

This doctrine based on the intention of the parties appears to be in conflict with two out of the three basic postulated supporting the existence of the statutes of limitation, first being that long duration claim have more of cruelty than justice in them, the second that person with good causes of action should pursue them with reasonable diligence, (the third being that a defendant might have lost the evidence to disprove a stale claim- vide para 330 at page 181 of the Halsbury's Laws of England 3rd Edn. Vol. 24).

10. Lord Hobhouse in *Mussamat Basso Kuar v. Lala Dhun Singh* (1887) 15 Ind App 211 at p. 218 (PC) propounded a somewhat similar theory:-

"It would be an inconvenient state of the law if it were found necessary for a man to institute a perfectly vain litigation under peril of losing his property if he does not. And it would be a lamentable state of the law if it were found that a debtor, who for years had been insisting that his creditor shall take payment in a particular mode, can, when it is decide that he cannot enforce that mode turn round and say that the lapse of time has relieved him from paying at all"

But, the supreme court in *Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others*, held the observation bitter and adopted the dicta laid in *Nagendra Nath Dey v. Suresh Chandra Dey* ((1932) 59 Ind App 283) (PC0 viz., "equitable considerations are out of place, strict grammatical meaning of the words is the safe guide."

11. In this view, we agree with our learned brother Venkatrama Sastry J., that the suit is barred by limitation. The appeal fails and is dismissed. The appellants to pay costs.

12. Appeal dismissed.